

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

MAVERICK GAMING, LLC.

Plaintiff,

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

NO. 3:22-cv-05325-DGE

STATE DEFENDANTS'
RESPONSE IN SUPPORT OF
SHOALWATER BAY TRIBE'S
MOTION TO DISMISS

I. INTRODUCTION

The State Defendants agree with the Shoalwater Bay Tribe that controlling Ninth Circuit precedent requires dismissal of this action under Federal Rules of Civil Procedure 12(b)(7) and 19. *See Klamath Irrigation Dist. v. U.S. Bureau of Reclamation*, 48 F.4th 934, 948 (9th Cir. 2022); *Diné Citizens Against Ruining Our Env't v. Bureau of Indian Affs.*, 932 F.3d 843, 861 (9th Cir. 2019). The Tribe's Motion to Dismiss should be granted.

II. BACKGROUND

Plaintiff Maverick Gaming, LLC challenges gaming compacts between Washington State and 29 Indian Tribes, which they entered in accordance with the Indian Gaming Regulatory Act (IGRA) and Washington law. *See generally* Dkt. #66 (First Amended Complaint, hereinafter "FAC"). The compacts provide a negotiated resolution to gambling disputes between Indian

1 Tribes, Washington State, and the federal government, an account of which the Shoalwater Bay
2 Tribe provides in its motion. *See* Dkt. #85 (Mot.) at 5–6. In accordance with the compacts, Indian
3 Tribes located in Washington State conduct certain permitted gambling activities on their
4 sovereign land for profit. *See, e.g.*, Dkt. #67-6, AR 103–130 (describing amendments to the
5 Shoalwater Bay Indian Tribe Gaming Compact permitting sports wagering). Each compact was
6 evaluated by the U.S. Department of the Interior and found compliant with federal law. *See, e.g.*,
7 Dkt. #67-9, AR 139-142 (letter from Bryan Newland, Assistant Secretary, approving of
8 Shoalwater Bay Tribe compact amendments). Maverick seeks a Court order invalidating all 29
9 compacts and the state laws that authorize them, and declaring that continued gaming in
10 conformity with the compacts violates federal law. FAC ¶ 207. Maverick’s prayer for relief
11 specifically seeks a declaration “that the Tribes’ class III gaming activities violate IGRA, 15
12 U.S.C. § 1175, 18 U.S.C. § 1955, and 18 U.S.C. § 1166.” *Id.* ¶ 207(4).

13 This action was originally brought in the U.S. District Court for the District of Columbia.
14 Dkt. #1. The State Defendants objected to personal jurisdiction in that venue and sought transfer
15 to this Court. Dkt. ##30, 30-1. In an attempt to avoid transfer of venue, Maverick moved to
16 amend its complaint to drop the State Defendants from the action. *See* Dkt. ##35, 37 at 3–5. The
17 State Defendants objected to the proposed amendment because litigating this action in their
18 absence would prejudice them, and because Maverick’s proposed amended complaint would
19 have to be dismissed under Rule 19 and was therefore futile. Dkt. #41. The D.C. court, finding
20 that it lacked personal jurisdiction over the State Defendants, transferred venue to this Court.

21 This Court then granted the Shoalwater Bay Tribe permission to intervene for the limited
22 purpose of bringing a motion to dismiss under Rules 12(b)(7) and 19. Dkt. #84. The Tribe filed
23 its motion to dismiss on October 3, 2022. Dkt. #85. The State Defendants agree with the Tribe
24 that Ninth Circuit precedent requires dismissal pursuant to Rules 12(b)(7) and 19.

III. ARGUMENT

This Court should dismiss Maverick’s complaint under Rules 12(b)(7) and 19 because the Shoalwater Bay Tribe is a necessary party that cannot be joined to this litigation, and this case cannot justly proceed in its absence. As explained in the Tribe’s motion, Rule 19 sets out a three-step process to determine if dismissal is appropriate for failure to join a party. Mot. at 11–12. The Court must determine, first, if a party is “necessary” or “required” under Rule 19(a); second, whether the party may feasibly be joined to the action; and third, if the party cannot feasibly be joined, “whether, in equity and good conscience, the action should proceed among the existing parties or be dismissed.” *Id.*

A. The Shoalwater Bay Tribe Is a Necessary Party

At the first step, a party is necessary under Rule 19(a) where it “claims an interest relating to the subject of the action and is so situated that disposing of the action in the [party]’s absence may . . . as a practical matter impair or impede the [party]’s ability to protect that interest[.]” Fed. R. Civ. P. 19(a)(1)(B).¹ That standard is met here.

First, Maverick’s requests for a declaration that the Tribe’s compact with the State is invalid, FAC ¶ 207(1), and that the Tribe’s gaming activities violate federal law, FAC ¶ 207(4), directly implicate the Tribe’s interests. Mot. at 13–14; *see also* Dkt. #87-1 (Amicus Br.) at 9–10. Courts have repeatedly concluded that, where a plaintiff’s success on the merits would impact an absent Tribe’s proprietary or legal interests—including interests related to an IGRA compact—the Tribe is a necessary party under Rule 19(a). *See Diné Citizens*, 932 F.3d at 853 (finding Navajo Nation had legally protectable interests at stake in litigation where ruling on the merits “may have retroactive effects on approvals already granted for mining operations” to the Tribe); *Am. Greyhound Racing, Inc. v. Hull*, 305 F.3d 1015, 1023 (9th Cir. 2002) (holding that Tribe was a necessary party in litigation concerning the validity of gaming compacts under the

¹ Rule 19(a)(1)(B) is sufficient to establish necessary party status, and at this time, the State takes no position on the alternative basis under Rule 19(a)(1)(A).

1 IGRA); *Kescoli v. Babbitt*, 101 F.3d 1304, 1309–10 (9th Cir. 1996) (holding that Tribes were
2 necessary parties to lawsuit affecting conditions under which tribal contractor could conduct coal
3 mining, which in turn “could affect the amount of royalties received by [the Tribes] and
4 employment opportunities for their members”). Here, the Shoalwater Bay Tribe validly claims
5 legal, sovereign, proprietary, and economic-development interests in being able to continue its
6 gaming operations pursuant to its compact with the State. Mot. at 13–14.

7 Second, as the Tribe argues, no current party to the litigation adequately represents the
8 Tribe’s interests. Mot. at 18–23; see *Klamath Irrigation Dist.*, 48 F.4th at 944 (party is not
9 necessary under Rule 19(a)(1)(B) where its interests will be “adequately represented by existing
10 parties to the suit”). The Ninth Circuit has consistently held that governmental parties interested
11 in fulfilling their legal obligations or defending their official actions cannot adequately represent
12 a Tribe’s proprietary, economic, or sovereign interests. *Klamath Irrigation Dist.*, 48 F.4th at
13 944–45 (federal government’s interest “differs in a meaningful sense from [the tribe’s] sovereign
14 interest The Tribes’ primary interest is in ensuring the continued fulfillment of their reserved
15 water and fishing rights, while [the Bureau of] Reclamation’s primary interest is in defending its
16 Amended Proposed Action taken pursuant to the ESA and APA.”); *Diné Citizens*, 932 F.3d at
17 855 (“[W]hile Federal Defendants have an interest in defending their own analyses that formed
18 the basis of the approvals at issue, here they do not share an interest in the *outcome* of the
19 approvals”); *White v. Univ. of Cal.*, 765 F.3d 1010, 1027 (9th Cir. 2014) (Tribe and State
20 not aligned on issue of repatriation of aboriginal remains); *Manygoats v. Kleppe*, 558 F.2d 556,
21 558 (9th Cir. 1977) (tribal and federal interests not aligned where Tribe had practical interest in
22 the continued operation of a mine, while federal government had broader interests, including
23 obligations under environmental laws). And the State, for its part, “owes no trust duty to the
24 tribes.” *Am. Greyhound Racing, Inc. v. Hull*, 305 F.3d 1015, 1023 n.5 (9th Cir. 2002) (“the State
25 and the tribes have often been adversaries in disputes over gaming”).
26

1 Here, no other party shares the Shoalwater Bay Tribe's sovereign, proprietary, and
2 economic interests in operating its own gaming business on its sovereign land. *See Friends of*
3 *Amador Cnty. v. Salazar*, 554 Fed. App'x. 562, 564–65 (9th Cir. Jan. 29, 2014) (unpublished)
4 (upholding determination that federal government could not represent Tribe's interests in
5 challenge to IGRA gaming compacts). The Tribe is a necessary party here.

6 **B. The Shoalwater Bay Tribe Cannot be Joined Due to Its Sovereign Immunity**

7 At the second step, the Shoalwater Bay Tribe is protected by sovereign immunity, and
8 may not be sued without its consent. *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian*
9 *Tribe of Ok.*, 498 U.S. 505, 509 (1991). Under controlling Circuit law, the Tribe's sovereignty
10 is dispositive and requires dismissal under Rule 19.

11 In the Ninth Circuit, where a party is necessary under Rule 19(a), but cannot be joined
12 due to tribal sovereign immunity, a “wall of circuit authority” dictates dismissal under Rule
13 19(b). *Diné Citizens*, 932 F.3d at 857. Although courts generally apply a four-factor balancing
14 test, *see* Mot. at 11–12, “[t]he balancing of equitable factors under Rule 19(b) almost always
15 favors dismissal when a tribe cannot be joined due to tribal sovereign immunity.” *Jamul Action*
16 *Comm. v. Simermeyer*, 974 F.3d 984, 998 (9th Cir. 2020); *see also Skokomish Indian Tribe v.*
17 *Goldmark*, 994 F. Supp. 2d 1168, 1192 (W.D. Wash. 2014) (“[W]hen a necessary party is
18 immune from suit, ‘there is very little room for balancing of other factors.’”) (quoting *Wichita*
19 *& Affiliated Tribes of Ok. v. Hodel*, 788 F.2d 765, 777 n.13 (D.C. Cir. 1986)). The Ninth Circuit
20 has observed that “there is a ‘wall of circuit authority’ in favor of dismissing actions in which a
21 necessary party cannot be joined due to tribal sovereign immunity—‘virtually all the cases to
22 consider the question appear to dismiss under Rule 19, regardless of whether [an alternate]
23 remedy is available, if the absent parties are Indian tribes invested with sovereign immunity.’”
24 *Diné Citizens*, 932 F.3d at 857 (quoting *White*, 765 F.3d at 1028). This Ninth Circuit precedent
25 dictates dismissal. *See Klamath Irrigation Dist.*, 48 F.4th at 948; *Diné Citizens*, 932 F.3d at 857.
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DATED this 24th day of October, 2022.

s/ Kristin Beneski

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1 DATED this 24th day of October 2022, at Seattle, Washington.

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